

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
AT GREENEVILLE

UNITED STATES OF AMERICA)
)
 v.) Crim. No. CR-2-93-46
)
 HAYTER OIL COMPANY, INC. OF)
 GREENEVILLE,)
 TENNESSEE d/b/a MARSH PETROLEUM)
 COMPANY AND SONNY WAYNE MARSH,)
)
 Defendants.)

**RESPONSE OF THE UNITED STATES OPPOSING
DEFENDANT MARSH'S MOTION FOR A BILL OF PARTICULARS**

Defendant Sonny Wayne Marsh seeks evidence in a motion for a bill of particulars that demands that the government reveal the details regarding the evidence it will seek to introduce at trial and the theory on which it intends to proceed. The demands in his motion range far beyond the scope of a legitimate bill of particulars. Moreover, to a large extent, defendant frivolously moves for information that he has already received in discovery. Consequently, defendant's motion should be denied.

I. FACTUAL BACKGROUND

A. Chronology

On July 21, 1993, a grand jury sitting in the Eastern District of Tennessee returned an indictment against defendant Marsh and his corporation, Hayter Oil Co., charging them with conspiring to fix retail gasoline prices in the Greeneville, Tennessee area, in violation of the Sherman Antitrust Act. 15 U.S.C. § 1. Defendant Marsh's counsel was notified of the indictment that afternoon.

On July 28, 1992, defendant Marsh moved the Court to dismiss the indictment based on the claim of improper grand jury empanelment. Defendant Hayter Oil joined that motion the day it

was filed.

On August 4, 1993, the defendants were arraigned.

On August 24, 1993, twenty days after he was arraigned, four weeks after he made his first pre-trial motion, and five weeks after he was indicted, defendant Marsh moved for a bill of particulars. Defendant's motion contained no excuse explaining why he moved for a bill of particulars ten days after the deadline for such a motion had expired. Fed. R. Crim. P. 7(f). Thus, the first reason the motion should be denied is that it is untimely.

B. Clarifications

Defendant's motion fails to mention the following: the parties' pre-trial discovery conference on August 4, 1993; the Court's pre-trial discovery order; the government's delivery of more than three filing cabinets of materials to defendants pursuant to the Court's discovery order; the government's filing of its notice of intent to introduce "other crimes" evidence pursuant to Federal Rule of Evidence 404(b); and the government's delivery of material to defendants pursuant to its obligations in Giglio v. United States, 405 U.S. 150, 154-55, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). These are material omissions, as they overwhelm defendant's arguments for a bill of particulars.

The defendant attempts to lead the Court into believing that this case is complex antitrust litigation, the likes of which has not been seen since the AT&T divestiture, and to which the spirit of the civil rules of discovery should apply. To the contrary, this is a straightforward price-fixing case, as defendant knows from the pre-trial conference, the discovery and Giglio materials, and from following the price-fixing prosecution of the Johnson City gasoline jobbers in 1992 in United States v.

Appalachian Oil, et al. Defendant knows the material facts concerning the charges in the indictment. Defendant knows that this is not a complicated case involving sophisticated transactions, multiple counts, dozens of conspirators or cutting-edge antitrust theories. Defendant knows this case involves a simple agreement among a few gasoline distributors to coordinate price increases at their outlets in Greeneville, and that the government expects to prove its case in three days. The indictment and the documents the government has provided in discovery fully inform the defendant of the central facts needed to allow him to investigate the charge against him.

II. ARGUMENT

Defendant's attempt to discover the entire case against him through a bill of particulars should be rejected, as he cannot establish that he needs more than the indictment, the discovery and Giglio documents and the other information he has learned about the case to understand the charge against him. Indeed, a review of defendant's demands makes clear that he hopes to gain a preview of the entire prosecution -- including cross-examination and rebuttal -- through his motion. For these reasons, defendant's motion should be denied.

A. The Standard of Review

A defendant is not entitled to a bill of particulars as a matter of right. Wong Tai v. United States, 273 U.S. 77, 82,

47 S. Ct. 300, 71 L. Ed. 545 (1927); United States v. Rey, 923 F.2d 1217, 1222 (6th Cir. 1991). Rather, "[t]he court may direct the filing of a bill of particulars" in its broad discretion. Fed. R. Crim. P. 7(f); United States v. Perkins, 994 F.2d 1184, 1190 (6th Cir. 1993); Rey, 923 F.2d at 1222.

Defendant's distorted analogies notwithstanding, a motion for a bill of particulars is not a civil discovery device designed to provide a detailed disclosure of the government's evidence prior to trial or to restrict the government's proof at trial. United States v. Automated Medical Labs., Inc., 770 F.2d 399, 405 (4th Cir. 1985); United States v. Anderson, 481 F.2d 685, 690 (4th Cir. 1973), aff'd, 417 U.S. 211 (1974). Simply put, that the requested evidence might be useful to the defendant in preparing his defense does not entitle him to a pretrial review of the government's evidence or the government's analysis of its evidence. United States v. Murray, 527 F.2d 401, 411 (5th Cir. 1976); Anderson, 481 F.2d at 690-91; United States v. Lobue, 751 F. Supp. 748, 756 (N.D. Ill. 1990); United States v. Jones, 678 F. Supp. 1302, 1304 (S.D. Ohio 1988).

A court should not order the filing of a bill of particulars unless the indictment and all of the other information available to the defendant fails to inform him of the central facts of the charges against him such that he can prepare his defense, avoid unfair surprise at trial, and be able to plead double jeopardy successfully in a subsequent prosecution. United States v.

Birmley, 529 F.2d 103, 108 (6th Cir. 1976); Jones, 678 F. Supp. at 1304. If the indictment and all of the other information available to the defendant fulfills these purposes, then a bill of particulars is inappropriate. United States v. Mahar, 801 F.2d 1477, 1503 (6th Cir. 1986); Birmley, 529 F.2d at 108; Jones, 678 F. Supp. at 1304; United States v. Graham, 487 F. Supp. 1317, 1320 (W.D. Ky. 1980). "[W]here the defendants have been given adequate notice of the charges against them, an assertion that the requested information would be useful is not enough" to justify a bill of particulars. United States v. Stroop, 121 F.R.D. 269, 272 (E.D. N.C. 1988).

Following this rule of evaluating the need for a bill of particulars in the light of all of the information known or available to a defendant, it has been held that "[i]n ascertaining whether a bill of particulars is appropriate, the Court may consider not only the indictment, but also all of the information which has been made available to the defendants." United States v. Fischbach and Moore, Inc., 576 F. Supp. 1384, 1389 (W.D. Pa. 1983), aff'd, 750 F.2d 1183 (3d Cir. 1984), cert. denied, 470 U.S. 1029 (1985); see also United States v. Martell, 906 F.2d 555, 558 (11th Cir. 1990); United States v. Marrero, 904 F.2d 251, 258 (5th Cir.), cert. denied, 498 U.S. 1000 (1990); United States v. Society of Independent Gasoline Marketers, 624 F.2d 461, 466 (4th Cir. 1979), cert. denied, 449 U.S. 1078 (1981). As Professor Wright has explained, "If the needed

information is in the indictment or information, then no bill of particulars is required. The same result is reached if the government has provided the information called for in some other satisfactory form." 1 C. Wright, Federal Practice and Procedure: Criminal 2d § 129 (1982).

Courts typically focus on three factors in deciding whether a bill of particulars is warranted: (1) the complexity of the offense; (2) the clarity of the indictment; and (3) the degree of discovery the defendant has been provided. United States v. Weinberg, 656 F. Supp. 1020, 1029 (E.D.N.Y. 1987); United States v. Horak, 633 F. Supp. 190, 195-96 (N.D. Ill. 1986), modified, 833 F.2d 1235 (7th Cir. 1987). Two key governmental interests also factor in a court's consideration of a motion for a bill of particulars. First:

In recognition of the Government's interest in not being forced to divulge the entirety of its case prior to trial, a court need not grant a request for a bill of particulars where it would serve to provide the defendant with "a detailed disclosure of the Government's evidence prior to trial."

United States v. Zolp, 659 F. Supp. 692, 706 (D.N.J. 1987)

(citations omitted); see also United States v. Addonizio, 451 F.2d 49, 64 (3d Cir. 1971), cert. denied, 405 U.S. 936 (1972).

Second, bills of particulars should be granted sparingly "to avoid 'freezing' the Government's evidence in advance of trial. Such freezing comes about because of the rule that requires proof at trial to conform to the particulars furnished in a bill."

United States v. Boffa, 513 F. Supp. 444, 485 (D. Del. 1980); see also United States v. Litman, 547 F. Supp. 645, 654 (W.D. Pa. 1982); United States v. Deerfield Specialty Papers, Inc., 501 F. Supp. 796, 810 (E.D. Pa. 1980).

Defendant's motion also ignores the long-established rule that in conspiracy prosecutions generally, the government is not required to disclose "the precise details that a defendant and his alleged co-conspirators played in forming and executing a conspiracy or all the overt acts the Government will prove in establishing the conspiracy." Boffa, 513 F. Supp. at 485.

Consequently,

[a] bill of particulars may not be used to compel the government to provide the essential facts regarding the existence and formation of a conspiracy. Nor is the government required to provide defendants with all overt acts that might be proven at trial. Nor is the defendant entitled to a bill of particulars with respect to information which is already available through other sources such as the indictment or discovery or inspection.

United States v. Rosenthal, 793 F.2d 1214, 1227 (11th Cir. 1986), cert. denied, 480 U.S. 919 (1987)(citations omitted). As the Sixth Circuit explained recently, "[a] defendant may be indicted and convicted despite the names of his co-conspirators remaining unknown, as long as the government presents evidence to establish an agreement between two or more persons, a prerequisite to obtaining a conspiracy conviction." United States v. Rey, 923 F.2d 1217, 1222 (6th Cir. 1991). Thus, requests for witness lists and lists of conversations that allegedly occurred between

co-conspirators go beyond the scope of a legitimate bill of particulars. United States v. Lobue, 751 F. Supp. 748, 756 (N.D. Ill. 1990); see also United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.), cert. denied, 439 U.S. 819 (1978); United States v. Persico, 621 F. Supp. 842, 868 (S.D.N.Y. 1985).

The rule exempting the government from disclosing detailed information regarding the formation and operation of a conspiracy applies with special force to this case, a federal price-fixing prosecution, because conviction for conspiring to violate the Sherman Act does not require proof of overt acts. That is, conspiring to violate the Sherman Act is a "non-overt act" conspiracy because the price-fixing agreement itself is the crime. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 224 n.59, 60 S. Ct. 811, 84 L. Ed. 1129 (1940); Nash v. United States, 229 U.S. 373, 378, 33 S. Ct. 780, 57 L. Ed. 1232 (1913). Accordingly, defendant has no claim to particulars about events that do not have to be alleged or proved.

B. The Simplicity of the Case, the Specificity of the Indictment, the Extensive Discovery that the Government Has Provided, and the Defendant's Extensive Access to Additional Information Makes a Bill of Particulars Unnecessary and Inappropriate in this Case

The defendant attempts throughout his motion to portray this case as being incredibly complex. It is not. The central issue at trial will be whether the defendant agreed with some of his competitors to fix retail prices at which they sold gasoline in Greeneville. The offense is the continuing agreement to work

together to increase prices. There are only two defendants in this case -- defendant Marsh and his corporation, Hayter Oil Co. Nearly all of his co-conspirators have pleaded guilty, and he has been provided with copies of their plea agreements pursuant to Giglio. These facts and more are obvious from the indictment, the discovery and Giglio materials and the other information that the defendant has learned from the government and other sources. In this setting, the defendant cannot begin to make a claim that satisfaction of his wide-ranging demands is necessary before he can prepare for trial.

Simply reading the indictment spells out the central facts and issues in this case. The indictment states when the conspiracy began, what its objectives were, what the defendants and their co-conspirators did to attain those objectives, and what geographic market was affected by the price-fixing agreement. Specifically, the indictment states when the indictment began and over what period of time it continued. Indictment ¶ 2. It states the purpose of the conspiracy. Id. ¶ 3. It sets forth the substantial terms of the conspiracy and provides examples of the means and methods employed by the conspirators to carry out the illegal agreement. Id. at ¶¶ 3-4. It defines the geographic area affected by the conspiracy precisely. Id. at ¶ 5. It describes the manner in which the defendants and their co-conspirators operated within interstate commerce and the way in which their activities had a substantial

effect on interstate commerce and were within the flow of interstate commerce. Id. at ¶¶ 10-11. In all these respects, the indictment meets the established standards for antitrust indictments. See United States v. Cadillac Overall Supply Co., 568 F.2d 1078, 1081-82 (5th Cir.), cert. denied, 437 U.S. 903 (1978); United States v. Magaw, 425 F. Supp. 636, 638 (E.D. Wis. 1977). The indictment contains all of the essential elements needed to apprise the defendant of the charge against him so that he can prepare for trial, avoid unfair surprise at trial and protect himself from double jeopardy.

A bill of particulars is especially inappropriate where, as in this case, extensive discovery has been made available to the defendants. Pursuant to the Court's discovery order and Federal Rule of Criminal Procedure 16, the government has made available for inspection and copying all documents which it may introduce in evidence at trial, all documents it possesses that are material to the defense, and many other documents subpoenaed from the co-conspirators and other persons relevant to this case.

For the defendants' convenience, the government moved all of these documents to the United States Attorney's office in Greeneville for four weeks. The government has also provided defendants with Giglio material, and it has filed its notice, pursuant to Federal Rule of Evidence 404(b), of the other crimes evidence it intends to introduce at trial.

Defendants have also gained vast amounts of information and

insight concerning the charge against them by following the 1992 prosecution of Johnson City jobbers in United States v. Appalachian Oil Co., et al. Defense counsel knows from attending the trial in that case, and from extensive discussions with the government over the past several years, that the case against the Greeneville defendants is similar to the case against the Johnson City jobbers. Defense counsel knows that the Greeneville defendants will even face some of the same government witnesses who testified in the Johnson City case. Defendant has access to transcripts of these witnesses' trial testimony, and he has access to his and his corporation's former and present employees. Where a defendant possesses significant information about his case or has access to that information, he cannot establish a legitimate need to roam through the government's files.

Defendant's first five requests seek a wealth of evidentiary detail regarding the operation of the conspiracy. Defendant could discern much of this information by reviewing the discovery documents. Defendant's remaining six requests demand evidence that he might encounter on cross-examination or in the government's rebuttal. Defendant could learn much of the demanded evidence -- certainly more than he is entitled to receive in a bill of particulars -- by reviewing the discovery documents and the government's Rule 404(b) notice. Granting defendant's motion under these facts would render the Court's discovery order completely superfluous and turn the government

into the defendant's investigator and counselor.

Defendant's motion consists of demands that far exceed the scope of a legitimate bill of particulars. His motion should be denied because it is nothing more than an attempt to benefit from the government's investigative efforts, preview the government's theory or prosecution and force the government "to fix irrevocably the perimeters of its case in advance of trial." United States v. Manetti, 323 F. Supp. 683, 696 (D. Del. 1971); see also Persico, 621 F. Supp. at 1132; Deerfield Specialty Papers, 501 F. Supp. at 810; Stroop, 121 F.R.D. at 272. In denying particulars similar to those demanded by the defendant in this case, the court in United States v. McCarthy, 292 F. Supp. 937, 940 (S.D.N.Y. 1968), stated:

The exact dimensions of this conspiracy, like most others, may never be known. Secrecy and concealment are the hallmarks of conspiracy. Granting particulars concerning the formation of the conspiracy, the place and date of each defendant's entrance into the conspiracy, the substance, or a copy, of the conspiracy agreement, and specifications of the manner in which the conspiracy operated would unduly limit the government's proof at trial. Moreover, if the defendants were given the minutiae they seek, the slightest discrepancy between the particulars and the evidence at trial would open the door to defendants' attempts to confuse the jury. [Citations omitted.]

The courts routinely deny motions like the defendant's in antitrust cases where "defendants either have in their possession or have been promised virtually all the information to which the government is privy and [their] motion is merely an attempt to compel the government to synthesize and correlate the information

into a comprehensible format." Deerfield Specialty Papers, 501 F. Supp. at 810.

The language of the indictment, the discovery that the government has provided in this case and defendant's extensive knowledge of the case against him provide ample grounds for the denial of his motion. Rosenthal, 793 F.2d at 1227; United States v. Amend, 791 F.2d 1120, 1125 (4th Cir.), cert. denied, 479 U.S. 930 (1986); Society of Independent Gasoline Marketers, 624 F.2d at 466; Birmley, 529 F.2d at 108. For the foregoing reasons, the defendant's motion for bills of particulars is wholly without merit or foundation, and should be denied.

C. Defendant's Requests Exceed the Scope of a Legitimate Bill of Particulars

Defendant's demands, contained in Requests 1 through 11, fall into two categories, which are reviewed below. Both sets of requests should be denied.

1. **Requests 1, 2, 3, 4 and 5 Demand Evidence Regarding the Operation of the Conspiracy that Is Far Beyond the Scope of a Legitimate Bill of Particulars**

Requests 1 through 5 attempt to discover the government's entire case by demanding a wealth of evidentiary detail about every conceivable aspect of the operation of the charged conspiracy. Request 1 demands: the identity of all co-conspirators; all acts performed by each co-conspirator; all statements in furtherance of the conspiracy; and the identity of each defendant who acted with the co-conspirators. Request 2 demands evidence as to the dates, times, places and persons

present when and where each defendant and co-conspirator entered into and engaged in the conspiracy.

Request 3 demands the dates, times, places and persons present when the alleged agreement was made, whether such agreement was oral or written, and any documents evidencing the alleged agreement. It further demands every price, price increase or price decrease which constitutes an overt act, as well as a description of each and every term of the conspiracy. Request 4 demands the time, date, place, and participant in all discussions of retail gasoline prices; any written documents reflecting such discussions, and all documents which identify any retail price change discussion. Request 5 demands a summary and evaluation of the evidence regarding the interstate nature of the conspiracy.

The most glaring excess of these demands is that they trample over the long-established rule -- discussed at length above -- that defendants are not entitled to detailed evidence about a charged conspiracy to ease their burden in preparing for trial. Rey, 923 F.2d at 1222; Rosenthal, 793 F.2d at 1227; Jones, 678 F. Supp. at 1304; see also Persico, 621 F. Supp. at 868 ("[d]etails as to how and when the conspiracy was formed, or when each participant entered it, need not be revealed before trial"); United States v. Litman, 547 F. Supp. 645, 654 (W.D. Pa. 1982)(government need not disclose in bill of particulars the details of the roles defendant and his co-conspirators played in

forming and executing a conspiracy or all the overt acts it will prove at trial).

Defendant cannot overcome this rule with his contention that this is a "complex" case, for even in antitrust conspiracy cases much more complex than the Greeneville gasoline price-fixing scheme, courts have held that "defendants are not entitled to discover all the overt acts that might be proved at trial." United States v. Kilrain, 566 F.2d 979, 985 (5th Cir.), cert. denied, 439 U.S. 819 (1978); see also Deerfield Specialty Papers, Inc., 501 F. Supp. at 810.

Thus, in United States v. Climatemp, Inc., 482 F. Supp. 376 (N.D. Ill 1979), aff'd, 705 F.2d 461 (7th Cir. 1983), cert. denied, 462 U.S. 1134 (1983), where twenty defendants were charged with bid-rigging and multiple counts of mail fraud in a truly complicated case, the court denied particulars that, like the defendant's demands in this case, sought "details of conspiratorial meetings, what was said at each meeting, and all the acts of the co-conspirators tending to connect each of them to the alleged conspiracy" and "the substance of all conversations and oral statements." 482 F. Supp. 390. In denying the requests, the court characterized them as seeking evidentiary detail far beyond the appropriate limits of a bill of particulars. Id.; see also Rosenthal, 793 F.2d at 1227 (bill of particulars cannot be used to compel government to provide the essential facts regarding the existence and operation of a

conspiracy); United States v. Armocida, 515 F.2d 49, 54 (3d Cir.), cert. denied, 423 U.S. 858 (1975) (defendant's request for "the when, where, and how of overt acts" not alleged in the indictment was "tantamount to a request for 'wholesale discovery of the government's evidence,' which is not the purpose of a bill of particulars"). These decisions reinforce what reviewing defendant's first five requests makes obvious: they seek to convert a bill of particulars into a bulldozer to gain broad discovery and, therefore, should be denied.

2. Requests 6 Through 11 Regarding Other Crimes and Acts of Misconduct Demand Evidence that Is Far Beyond the Scope of a Legitimate Bill of Particulars

Defendant characterizes requests 6 through 11 as demanding "other crimes and wrongs evidence." Requests 6, 7 and 8 demand evidence regarding the defendant's other crimes, wrongs and acts of misconduct that the government intends to introduce in its case-in-chief **or on rebuttal**. Requests 9, 10 and 11 demand evidence of the defendant's other crimes and misconduct that the government plans to use **in cross-examination**. Defendant cannot begin to make a claim that he needs this information to understand the central facts of the charges against him, avoid unfair surprise at trial or protect himself from double jeopardy. Consequently, requests 6 through 11 should also be rejected.

The United States has filed a Notice of Intent to Use 404(b) Evidence that supplies all of the other crimes, wrongs and

misconduct evidence that defendant is entitled to receive prior to trial. Defendant cites no authority -- because there is none -- that would give him grounds to claim the evidence he seeks under requests 6 through 11. Instead, he has attempted to ignore the notice in his motion, just as he has attempted to ignore the discovery he has received. The Court should not be deceived by defendant's material omissions.

Requests 9, 10 and 11 are perhaps the best example in the motion of defendant's attempt to use a bill of particulars as a discovery device. The requests demand evidence that the government might use on cross-examination. In these requests, defendant demands a preview of cross-examination, which he wants to help him assess whether he should take the witness stand at trial. This is precisely the type of evidence a defendant is not entitled to receive through a bill of particulars.

Requests 6 through 11 seek information regarding matters that the government does not have to plead or prove to gain defendant's conviction for his role in the Greeneville gasoline price-fixing scheme. Therefore, the requests are without legal foundation and should be denied.

D. Defendant's Cited Authority Is Inapplicable

Defendant cites numerous cases in his motion that acknowledge that defendants are entitled to understand the central facts of the charges against them, avoid unfair surprise at trial and protect themselves from double jeopardy. None of

the cases defendant cites, however, support the wholesale discovery he demands.

Significantly, defendant relies on several cases that were decided years or decades before Congress overhauled Federal Rule of Criminal Procedure 16 in 1966 and again in 1974. Many of defendant's cases address situations that the 1966 and 1974 amendments were designed to alleviate -- situations that could not exist under the pretrial discovery order that the Court handed down in this case. Thus, while most of the cases cited in defendant's motion may be interesting from an academic or historical perspective, they are obsolete and irrelevant.

For example, defendant relies on the decision in United States v. American Oil Co., 259 F. Supp. 851 (D.N.J. 1966). There, seven defendants were charged with three Sherman Act violations. Defendant's reliance on this case is peculiar, as the court in that case denied particulars substantially similar to those demanded by the defendant. The court denied particulars demanding all statements made by each co-conspirator in furtherance of the conspiracy, the substance of the statements if oral, and the identification of the documents embodying such statements if written. Id. at 853. The court explained such requests had to be denied because "[t]he request for statements, as well as the request for the contents thereof, seeks information beyond the appropriate limits of a Bill of Particulars and is properly refused." Id.

Many of the cases that defendant cited for the proposition that the government must provide evidence of overt acts are not antitrust cases. This defect is material because, as developed above, it is not necessary to prove overt acts to prove the crime of price fixing, because the agreement is the offense. United States v. Socony-Vacuum Oil Co., 310 U.S. 150, 224 n.59, 60 S. Ct. 811, 84 L. Ed. 1129 (1940); Nash v. United States, 229 U.S. 373, 378, 33 S. Ct. 780, 57 L. Ed. 1232 (1913).

Defendant's motion cannot survive scrutiny in light of relevant decisions involving antitrust violations in which the courts have denied the types of particulars that are demanded in this case. In United States v. Deerfield Specialty Papers, Inc., 501 F. Supp. 796 (E.D. Pa. 1980), for example, the court concluded that the "defendants were not entitled . . . to evidentiary matters, names of prospective government witnesses or a list of overt acts which the government intend [ed] to prove at trial." Id. at 810. Similarly, the court in United States v. Fischbach and Moore, Inc., 576 F. Supp. 1384 (W.D. Pa. 1983), aff'd, 750 F.2d 1183 (3d Cir. 1984), cert. denied, 470 U.S. 1029 (1985), acknowledged that it was "well established that a bill of particulars is not to be used by the defendants as a discovery tool . . . by which defendants obtain disclosure of every detail of the theory and preparation of the government's case." 576 F. Supp. 1389.

IV. CONCLUSION

Defendant's motion for a bill of particulars unravels in the first paragraph on page nine of his supporting memorandum, where he claims that the evidence he demands will help him "sift more efficiently" through the documentary evidence, "more intelligently interview" potential witnesses and "more cogently" prepare jury instructions. Defendant does not claim that he cannot sift, interview or prepare now; nor does he dare claim that he needs the evidence to understand the central facts of the charges against him, avoid unfair surprise at trial or protect himself from double jeopardy -- the only legitimate functions of a bill of particulars. Rather, defendant makes it clear in his memorandum that he wants to preview the entire case against him, including his cross-examination, for the purpose of making his trial preparation easier or, in his words, to make it more efficient, more intelligent, more cogent.

Defendant is not entitled to have the government synthesize the evidence for him and detail exactly what proof, cross-examination and rebuttal will be offered at trial. The defendant's claim that his demands are necessary because this is a complex case verges on the ludicrous. As demonstrated above, the indictment, the wealth of discovery materials provided pursuant to the Court's discovery order, the government's Rule 404(b) memo and early Giglio material enable defendant to understand the central charges against him, prepare his defense

at trial, avoid unfair surprise and protect himself against double jeopardy. Defendant's motion has no support in law or fact. Granting oral argument on defendant's motion would, in all likelihood, be a waste of the Court's time and resources. For these reasons, the government respectfully requests that the defendant's motion for a bill of particulars be denied.

DATE: September ____, 1993

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on September 2, 1993 the Response Of The United States Opposing Defendant's Motion For A Bill Of Particulars was served on the following counsel by sending photocopies of the response to them via United States mail to the following addresses:

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